Supreme Court, U.S.
FILED

02-1554 FEB 20 2003

No.

OFFICE OF THE CLERK

In The

Supreme Court of the United States

MIGUEL GADDA, an individual,

Petitioner,

vs.

THE SUPREME COURT OF CALIFORNIA,
THE STATE BAR COURT AND
STATE BAR OF CALIFORNIA

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of California

PETITION FOR WRIT OF CERTIORARI

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16 pp

QUESTION PRESENTED

Immigration laws and regulations are under the exclusive jurisdiction of the Federal courts and agencies. New Federal regulations that discipline Immigration practitioners before their courts or agencies are under the exclusive jurisdiction of those courts and agencies. Do the State Bar, State Bar Court and the California Supreme Court have any jurisdiction to discipline petitioner on immigration matters?

PARTIES TO THE PROCEEDING

Petitioner

Miguel Gadda, an individual

Respondents

The Supreme Court of California, the State Bar Court of California and the State Bar of California

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PETITION FOR WRIT OF CERTIORARI

Petitioner Miguel Gadda respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of California (January 22, 2003).

OPINIONS

The opinion below was not published. The opinion of the Supreme Court of California is reproduced in Appendix 1.

STATEMENT OF JURISDICTION

The decision of the Supreme Court of California, which forms the basis of this petition for Writ of Certiorari was entered on *January 22, 2003*. (App. 1). This Petition for Writ of Certiorari is filed within 90 days of the denial of the Petition to Review by the California Supreme Court.

The United States Supreme Court has jurisdiction to review this case on petition for writ of certiorari pursuant to 28 U.S.C. § 1257.

STATUTES INVOLVED IN THIS CASE

8 U.S.C. § 1103(a)(3) provides in part:

(a) Attorney General

> (3) He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for

carrying out his authority under the provisions of this chapter.

STATEMENT OF THE CASE

This case involves discipline by the California State Bar Court and the Supreme Court of California on attorneys who only practice federal immigration matters. Petitioner was admitted to the California State Bar in August of 1975. Thereafter through his admission to the State Bar of California, he petitioned and became a member in good standing with the District Court of California, Northern District, the Ninth Circuit Court of Appeals, and the Supreme Court of the United States. He is also a member of the Board of Immigration Appeals and is authorized to practice before that Board, and all the Immigration courts and Immigration and Naturalization Service's offices throughout the United States. It is undisputed by all parties that he only practices federal immigration law.

A California State Bar Hearing Judge recommended that petitioner be disbarred and placed him on involuntary inactive enrollment on July 27, 2001, under California Business & Professions Code, § 6007(c)(4). Petitioner did not appeal that involuntary inactive enrollment interim order, but made a timely appeal to the California State Bar Review Department. The opinion by the Hearing Department's Judge placing petitioner on involuntary inactive enrollment set a tremendous, federal agency, District Court and Ninth Circuit litigation which is still pending in four federal forums. This was Federal Express in the truest sense.

The Board of Immigration Appeals (BIA) sided with, adopted and interpreted the State Bar's Hearing Department decision as a final order from the Supreme Court of California even though there was never any final order from the Supreme Court of California. They suspended petitioner from practicing in any Immigration Court or Immigration Office throughout the United States. The result was the loss of petitioner's law practice.

The State Bar Court Review Department after reviewing the case *de novo*, recommended that petitioner be disbarred but did not place him on involuntary inactive enrollment. It designated this opinion to be published. After a motion from the State Bar it amended its decision and placed petitioner on involuntary inactive enrollment. The California Supreme Court denied a petition to review and a motion to augment the record in a one-paragraph decision.

The Supreme Court of California, the State Bar Courts and the federal District Court never addressed the issue of preemption, which lies at the heart of this appeal.

REASONS FOR GRANTING THE WRIT

THE CALIFORNIA SUPREME COURT DID NOT CONSIDER PREEMPTION OR NEW FEDERAL REGULATIONS REGARDING DISCIPLINE OF FEDERAL IMMIGRATION ATTORNEYS IN THEIR DECISION

This case concerns federal preemption, Supremacy clause and jurisdictional limits of the State Bar Court to discipline California State Bar members who only practice federal immigration law for misconduct in federal courts and agencies. For decades, the law has recognized that

immigration laws and regulations are under the exclusive jurisdiction of federal courts and agencies. There are new federal regulations specifically dealing with discipline of immigration law practitioners. It is undisputed by all parties that petitioner only practices federal immigration law in federal forums.

This case has enormous consequences for attorneys who practice federal law and are members of the California Bar. The issues presented have broad applicability not only to California attorneys but to attorneys across the country who practice federal law and are members of federal bars or other states bars who also are members of the California Bar. This case should clarify the Supreme Court of California's silent opinion regarding jurisdiction of federal immigration attorneys who only practice immigration law and their connection in such matters with the State Bar of California.

1. Immigration laws and regulations are under the exclusive jurisdiction of the Federal courts and Federal Administrative Agencies. New Federal regulations that discipline Immigration practitioners before their courts or agencies are under the exclusive jurisdiction of those courts and agencies. The California Supreme Court was preempted by federal precedent law, statutes and regulations and lacked jurisdiction to discipline petitioner on immigration matters.

The Rules of Professional Conduct and Discipline Concerning a Practitioner's Conduct in Immigration Courts, BIA, and the Immigration Service are within the exclusive jurisdiction of the Federal sovereign.

In exercising its plenary power over immigration, Congress has granted express authority to the Attorney General to "establish such regulations * * * as (s)he deems necessary for carrying out (her) authority" under the laws relating to the immigration and naturalization of aliens. 8 U.S.C. § 1103(a)(3). Congress also provided that aliens in immigration proceedings "shall have the privilege of being represented (at no expense to the government) by such counsel authorized to practice in such proceedings, as he shall choose." 8 U.S.C. § 1362. In so doing, Congress vested implied authority with the Attorney General to prescribe standards of conduct and rules of procedure that are applicable to practitioners who appear before the Board, the Immigration Courts, and the Service.

The Supreme Court held that the federal government has preemptive powers over state's legislative and judicial authorities when acting under valid federal regulations. *See Sperry v. Florida*, 373 U.S. 379 (1963). Therefore the BIA and the Service have the authority (and indeed), have had the authority since these regulations were first adopted more than 45 years ago to promulgate disciplinary regulations on a nationwide basis governing the privilege of appearing as an attorney or representative before the Board, the Immigration Courts and the Service.

> "It is imperative that EOIR and the Service administer uniform disciplinary system among the respective Immigration Courts. . . . EOIR and the Service should not be expected or required to apply numerous local rules, or local interpretations of the rules, to problems that require national uniformity. Applying local rules or local interpretations in lieu of a national standard would leave immigration attorneys in one state subject to discipline, while possible exempting

> immigration attorneys in another state. EOIR and the Service do not believe that it would benefit the Board, the Immigration Courts, the Service, the public, or attorneys to promote inconsistency in regulating the conduct of practitioners who all practice before the same forum. . . . EOIR and the Service anticipate working closely with the various state bars when investigating disciplinary complaints. Referrals to state bars may be appropriate when a complaint does not allege a violation of the federal regulations but may allege a violation of state bar rules or regulations. . . . Moreover, immigration law is a very complex area and this program may assist state bars with investigating allegations of misconduct against immigration attorneys". *See* Fed. Reg. Vol. 65, No. 124, pg. 39524 (June 27, 2000); 8 C.F.R. § 3.101 (Jan.1, 2002).

As one court stated in reference to the foregoing express grants of authority from Congress, "an agency empowered to prescribe its own rules has the implied power to determine who can practice before it." *Koden v. United States Dep't of Justice*, 564 F. 2d 228, 234 (7th Cir. 1977). In that case, the Seventh Circuit held that the authority bestowed on the Attorney General is more than adequate to empower, expressly or impliedly, an agency to set disciplinary standards applicable to representatives. Certain categories of administrative decisions have traditionally been regarded as "committed to agency discretion." *Lincoln v. Vigil*, 508 U.S. 182, 190-91 (1993). The United States Government handles Federal immigration matters. Due to dual sovereignty, the State Bar of California has no jurisdiction over federal immigration matters. Because of the co-existence of two separate governments within the United States, to wit, the United States and the

State government, each may not intrude upon the affairs of the other. Immigration matters are not permitted to be handled by state governments or their agencies, such as a State Bar. As held by the United States Supreme Court in *Theard v. United States*, 354 U.S. 278, 281, 1 L. Ed. 2d 1342, 77 S. Ct. 1247 (1957), "The federal and state court systems are two different sovereigns. The federal court may sanction for behavior within its system by an attorney, but the state system has no jurisdiction to adjudicate the rights of an attorney before a different sovereign." Petitioner's practice and matters before the Board, Immigration Courts and the Service are before a different sovereign, to wit, the federal government and in a different branch of government, to wit, the executive branch of government. They are not matters that are before or involve any state government nor are immigration matters within the jurisdiction of agencies or judicial branches of the State of California. *See* 8 C.F.R. §§ 3 and 292, [EOIR No. 112F; A.G. Order No. 2309-2000] RIN 1125-AA13, Professional Conduct for Practitioners – Rules and Procedures, Federal Register, Vol. 65 No. 124, June 27, 2000, Effective Date, July 27, 2000; 8 C.F.R. § 3.101 (revised Jan. 1, 2002). The United States Supreme Court stated that "Courts must give strong deference to administrative agencies' constructions of applicable regulations." *See Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 843-44 (1984). *See* generally, John F. Manning, *Constitutional Structure and Judicial Deference to Agency Interpretations of Agency Rules*, 96 Colum. L. Rev. 612 (1996). The BIA's interpretation of its own regulation is owed substantial deference and it is specially warranted because of the BIA's significant expertise makes it well suited to interpret its own regulations in this complex regulatory scheme. The BIA's interpretation "must be

given" controlling weight unless it is plainly erroneous or inconsistent with the regulation. *Thomas Jefferson*, 512 U.S. at 512 (*quoting Udall v. Tallman*, 380 U.S. 1, 16 (1965). "Administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties." *Albathani v. INS*, No. 02-1541 (1st Cir. Feb. 6, 2003) (*quoting Vt. Yankee Nuclear Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 543 (1978). In the instant case it is clear that the new regulations by the BIA in plain language and intent revise, revamp and preempt disciplinary regulations concerning immigration practitioners, *supra*.

They have new forms to complain against an immigration attorney. *See* form EOIR-44. *See* 8 C.F.R. § 3.104(a) (Jan. 1, 2002). They also have hearings and appeal rights for an immigration attorney that is disciplined by an impartial Immigration Judge. *See* form EOIR-45. 8 C.F.R. § 3.106(c) (Jan. 1, 2002). There can be no other reading of the clear intent of these new regulations to control exclusively discipline matters of immigration practitioners.

The Supreme Court of California never mentioned the sections of the new Federal regulations preempting state discipline, which are at the heart of this case. *See* 8 C.F.R. §§ 3 and 292 [EOIR No. 112F; A.G. Order No. 2309-2000] RIN 1125-AA13, Professional Conduct for Practitioners – Rules and Procedures, Federal Register, Vol. 65 No. 124, June 27, 2000, Effective Date, July 27, 2000; 8 C.F.R. § 3.101 (revised Jan. 1, 2002).

CONCLUSION

For all the reasons identified herein, a writ of certiorari should issue to review the decision of the Supreme Court of California, and, ultimately, to vacate and reverse the judgment of the Supreme Court of California.

Date: April 16, 2003

Respectfully submitted,

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S.B.C. No. 97-0-15010
S111517

IN THE SUPREME COURT OF CALIFORNIA

En Banc

(Filed Jan. 22, 2003)

In re MIGUEL GADDA on Discipline

Petition for Writ of Review Denied.
Motion to Augment Record Denied.

It is hereby ordered that **Miguel Gadda, State Bar No. 64832**, be disbarred from the practice of law in the State of California and that his name be stricken from the Roll of Attorneys of persons admitted to practice in this state. He is ordered to comply with the provisions of California Rules of Court, rule 955 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of this order.* Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and payable in accordance with Business and Professions Code section 6140.7.

/s/ George
Chief Justice

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* (See Bus. & Prof. Code, § 6126, subd. (c).)